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2005 NOV -9 P 2 39

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR 5577

DATE COMPLAINT FILED: 10/21/04

DATE OF NOTIFICATION: 10/28/04

LAST RESPONSE RECEIVED: 02/22/05

STATUTE OF LIMITATIONS: 10/14/09

MUR 5620

DATE COMPLAINT FILED: 11/29/04

DATE OF NOTIFICATION: 12/08/04

LAST RESPONSE RECEIVED: 10/20/05

STATUTE OF LIMITATIONS: 11/22/09

DATE ACTIVATED: 08/08/05

COMPLAINANT:

Thomas J. Strini

RESPONDENTS:

National Association of Realtors

National Association of Realtors Political Action

Committee and Michael C. Brodie, in his
official capacity as Treasurer

North Carolina Association of Realtors

The Richard Burr Committee and Timothy W

Gupton, in his official capacity as Treasurer

RELEVANT STATUTES:

2 U.S.C. § 433

2 U.S.C. § 434

2 U.S.C. § 441b(a)

11 C.F.R. § 100.22(a)

11 C.F.R. § 109.21

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

Internal Revenue Service

27044161609

I. INTRODUCTION

These matters were generated by two virtually identical complaints filed by a North Carolina resident regarding seven flyers he received in the mail shortly before the 2004 General Election. The flyers concerned Richard Burr, a sitting Congressman in North Carolina from outside the complainant's congressional district, who was a candidate for the U.S. Senate from North Carolina. According to the complainant, the National Association of Realtors ("NAR") sent the flyers, which the complainant says advocated for Burr's candidacy and, thus, constituted an excessive contribution to him.¹

As discussed in more detail below, this Office concludes that two of the flyers were properly paid for by NAR's separate segregated fund, REALTORS PAC ("RPAC"). There is some uncertainty, however, as to which entity funded the remaining five flyers,

While the flyers include a disclaimer that they were paid for by NAR, Internal Revenue Service ("IRS") disclosure reports reveal that a separate 527 fund,

NAR 527 is not registered as a political committee with the Commission despite having apparently met the statutory threshold for political committee status and having federal campaign activity as its stated purpose. Indeed, more than 99 percent of NAR 527's reported disbursements were for political advocacy campaigns on behalf of named federal candidates

Thus, this Office recommends that the Commission find reason to believe that NAR 527 violated 2 U S C §§ 433 and 434.

1

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We finally

recommend that the Commission find no reason to believe that RPAC, the Burr Committee, or the North Carolina Association of Realtors violated the Act

II. FACTUAL SUMMARY

NAR is a nonprofit 501(c)(6) corporation headquartered in Chicago. It claims to be the country's largest trade association, with one million members. NAR provides its members with a wide variety of services related to real estate issues, including education, issue advocacy, and professional guidance. NAR has two connected political organizations: RPAC, a separate segregated fund registered with the Commission, and NAR 527, an organization formed pursuant to section 527 of the Internal Revenue Code.

Although not disclosed by NAR or RPAC, publicly available information reveals that NAR itself may not have paid for the five flyers, notwithstanding the presence of a disclaimer stating, "Paid for by National Association of Realtors " IRS disclosure reports filed by NAR 527

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1 show that it made a number of disbursements during the relevant time period on behalf of the
2 Burr Committee and other federal candidates, including \$21,000 for "political advocacy mailers
3 for Richard Burr." See NAR 527 Form 990 at 7 (June 17, 2005). In fact, in 2004, NAR 527
4 made approximately \$3 million in disbursements, and except for \$8,000, all of the disbursements
5 were for political advocacy campaigns on behalf of various federal candidates. See *id.* NAR
6 527, which was established in October 2000, appears to receive contributions exclusively from
7 NAR members.² In its IRS filings, NAR 527 describes its primary exempt purpose as follows:
8 "To collect funds from members to use for political advocacy purposes. Print, radio and other
9 media buys are used to publicize political positions of candidates." See *id.*, at 2

10 The Burr Committee, also a respondent in both matters, was the principal campaign
11 committee of Richard Burr, who was a sitting Congressman in North Carolina when in 2004 he
12 became a Senate candidate. In its responses, the Burr Committee denied that any coordination
13 occurred and included an affidavit from its 2004 campaign manager stating that neither he nor
14 any agent of the Committee consulted or communicated with anyone from NAR. See Richard
15 Burr Committee Response ("Burr Response"), Attachment 1. The Burr Committee concludes
16 that it did not violate the Act. See Burr Response, at 3

17 Finally, North Carolina Association of Realtors ("NCAR"), which is a state chapter of
18 NAR, states that it did not contribute to the cost of the flyers. See NCAR Response, at 1.
19 Rather, it agreed to allow NAR to indicate on certain flyers that the flyer had been authorized by
20 NCAR. See *id.*

² NAR 527's address is the same as NAR's, and NAR employees also appear to work for NAR 527. For example, the custodian of records for NAR 527, Dale Stinton, is identified on NAR's website as NAR's CFO and CIO, and, as of November 1, 2005, NAR's new Chief Executive Officer.

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III. LEGAL ANALYSIS

A. NAR 527 Political Committee Status

The Federal Election Campaign Act of 1971, as amended ("the Act") defines a "political committee" as any committee, club, association, or other group of persons that receives "contributions" or makes "expenditures" for the purpose of influencing a federal election that aggregate in excess of \$1,000 during a calendar year. *See* 2 U.S.C. § 431(4)(A). The Act requires such political committees to register with the Commission and report contributions and expenditures and other information. *See* 2 U.S.C. §§ 433 and 434. For the purpose of triggering political committee status, the Act defines the terms "contributions" and "expenditures" as including "anything of value made by any person for the purpose of influencing any election for Federal office." *See* 2 U.S.C. §§ 431(8)(A)(i), (9)(A)(i).

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B.

C. RPAC

Two of the flyers attached to the complaints state that they were paid for by RPAC. These two flyers do contain express advocacy, as they both clearly identify Burr as a Senate candidate and direct the recipient to vote for Burr for Senate. *See* Attachments 3 and 4. RPAC appears to have lawfully paid for these and properly reported them as independent expenditures to the Commission. Thus, this Office recommends that the Commission find no reason to believe that RPAC violated 2 U.S.C. § 441b(a)

D. Richard Burr Committee

The complaints allege that NAR made an excessive contribution to the Burr Committee by paying for and sending the seven flyers. *See* Complaints, at 1. Although this appears to reflect a misunderstanding of the law rather than a bona fide coordination allegation, the respondents interpreted the complaints as alleging that NAR and the Burr Committee impermissibly coordinated the flyers. NAR, RPAC and the Burr Committee stated in their replies that there were no communications between them regarding the flyers. The Burr campaign manager avers in a sworn affidavit that neither he nor any agent of the campaign made any request or suggestion to NAR regarding any communication, discussed the Burr Committee's plans, projects, or needs, or consulted or discussed the communications with anyone from NAR. *See* Burr Response Affidavit, at 1-2. In addition, there is no publicly available information suggesting coordination. Accordingly, this Office recommends that the Commission find no reason to believe that NAR violated 2 U.S.C. §§ 441a or 441b by making, or the Burr Committee and Timothy W. Gupton, in his official capacity as Treasurer, by knowingly accepting, prohibited and excessive in-kind contributions in the form of coordinated communications.

E. North Carolina Association of Realtors

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1 In its response, NCAR states that it authorized NAR to use its name on four of NAR's
2 five flyers, including Attachment 6, , but NCAR
3 states that it did not make any disbursement regarding the flyers. Because there is no information
4 suggesting that NCAR expended funds for the flyers, this Office recommends that the
5 Commission find no reason to believe that NCAR violated 2 U.S.C. § 441b(a).

6 **IV. DISCOVERY**

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V. RECOMMENDATIONS

1. Generate National Association of Realtors – 527 Fund as a respondent in MURs 5577 and 5620.
2. Find reason to believe that the National Association of Realtors – 527 Fund violated 2 U S C. §§ 433 and 434 by failing to register and report as a political committee
- 3.
4. Find no reason to believe that the National Association of Realtors Political Action Committee and Michael C. Brodie, in his official capacity as Treasurer, violated 2 U S C § 441b(a) and close the file as to them.
5. Find no reason to believe that the North Carolina Association of Realtors violated 2 U.S.C. § 441b(a) and close the file as to it.
6. Find no reason to believe that National Association of Realtors violated 2 U S C §§ 441a or 441b by making excessive and prohibited contributions in the form of coordinated communications.
7. Find no reason to believe that the Richard Burr Committee and Timothy W. Gupton, in his official capacity as Treasurer, violated 2 U.S C §§ 441a or 441b by knowingly accepting excessive and prohibited contributions in the form of coordinated communications and close the file as to them.
8. Approve the attached Factual and Legal Analysis.
- 9.
10. Approve the appropriate letters

Date

Lawrence H. Norton
General Counsel

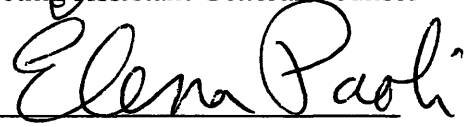
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Lawrence L. Calvert, Jr.
Deputy Associate General Counsel
for Enforcement



Julie Kara McConnell
Acting Assistant General Counsel



Elena Paoli
Attorney

Attachments

- 1 "Richard Burr – Building a *Stronger* North Carolina *One Neighborhood at a Time*" flyer
- 2 "The Wedding was expensive enough . " flyer
- 3 "Yours is the Voice of Freedom" flyer
4. "Make Waves" flyer
- 5 "The American Dream Is Turning into a Reality" flyer
6. "Richard Burr is Opening Up Homeownership to More Families" flyer
7. "A little nicer yard . " flyer
8. NAR and NAR 527 Factual and Legal Analysis



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THOMAS STRINI

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CHARLOTTE NC 28227-9282

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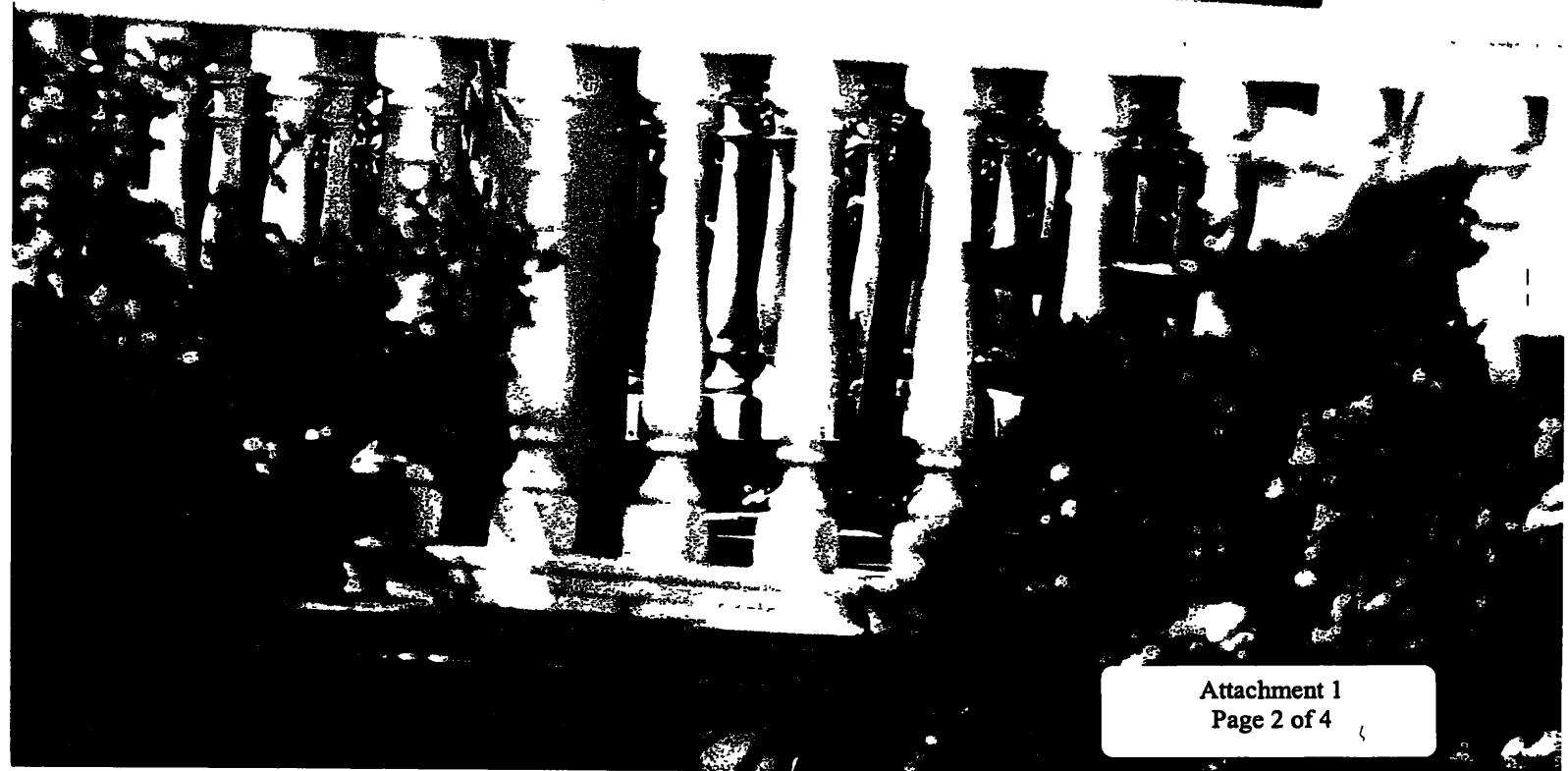


Richard Burr

Building a *Stronger*
North Carolina...

One *Neighborhood*
at a Time.

Attachment 1
Page 1 of 4



Richard Burr



Building a *Stronger* North Carolina...
One *Neighborhood* at a Time.



Richard Burr Is Making Health Care Affordable and Accessible for Everyone

In Congress, Richard Burr led the fight to pass legislation to make it easier for small businesses to offer health insurance for their employees. Burr opposes frivolous lawsuits that increase our health care costs and he supports legislation to guarantee that doctors, not HMOs, make medical decisions for patients.

Richard Burr Works to Reduce the Tax Burden on Families & Seniors

Richard Burr has voted to repeal death and marriage penalty taxes, increase the per child tax credit, and cut income taxes for working families. More than 2 million married couples in North Carolina have benefited from these tax cuts. Burr was given "The Taxpayer's Hero Award" for his work to cut government waste.

Richard Burr Protects North Carolina Jobs

Burr works to protect North Carolina workers from illegal imports from China, and he opposes unfair trade agreements that hurt American workers. Richard Burr had 17 years of real-world business experience before being elected to the Congress. Burr has worked to create a new research park that will create thousands of new jobs.

Richard Burr Helps Families Achieve the American Dream

Richard Burr supported the American Dream Downpayment Act. This program helps 40,000 families achieve the American Dream of homeownership each year by providing downpayment assistance through the states.



Richard Burr

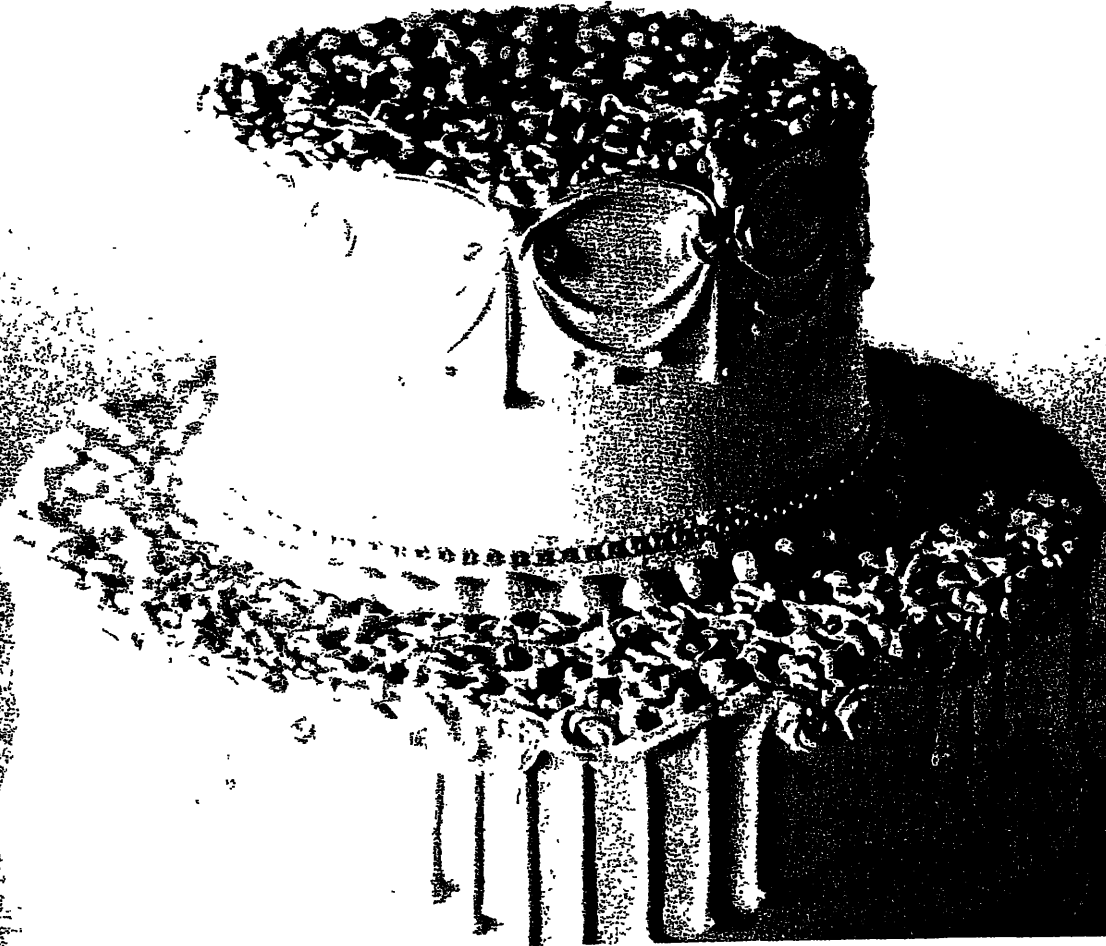
Works to Make *North Carolina Stronger*

For over a decade, Richard Burr has been a leader in the effort to improve the quality of life in North Carolina. He has the experience to make North Carolina stronger:

- Making Health Care Affordable and Accessible for Everyone
- Reducing the Tax Burden on Families & Seniors
- Protecting North Carolina Jobs
- Helping Families Achieve the American Dream



The Wedding was expensive enough...



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or Current Resident

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Attachment 2
Page 1 of 2



Richard Burr voted to repeal the Marriage Penalty Tax...



Richard Burr voted to repeal the Marriage Penalty Tax, putting more money in the hands of families in North Carolina.

Richard Burr helps North Carolina families achieve the dream of homeownership.

Now homeownership is at an all time high and many families are moving into their first homes.

Richard Burr voted to repeal the Marriage Penalty Tax, and that helps new families get off to a good start.

Attachment 2
Page 2 of 2

...And Now a First Home Is Just Around the Corner.



Yours Is the *Voice of Freedom*



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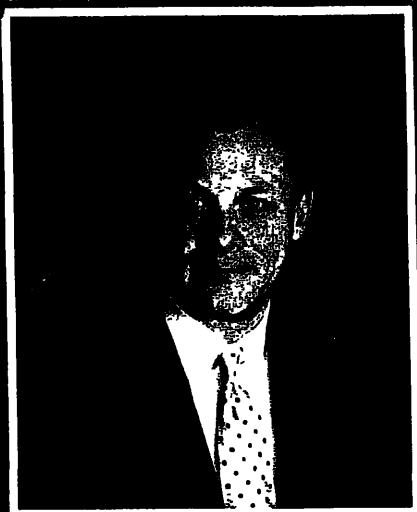
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Attachment 3
Page 1 of 2

V O T E

RICHARD BURR for U.S. SENATE



27044161631

Richard Burr Works to Make *North Carolina* *Stronger*

- ★ Making Health Care
Affordable and Accessible
for All North Carolina Families
- ★ Reducing the Tax Burden
on North Carolina Families
& Seniors
- ★ Protecting North Carolina Jobs
- ★ Helping North Carolina
Families Achieve the Dream
of Homeownership

VOTE NOVEMBER 2ND



Make Waves



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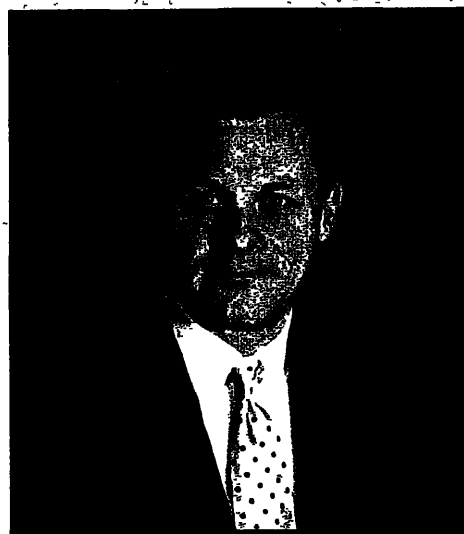
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Not authorized by any candidate or candidate's committee.

Attachment 4
Page 1 of 2

GO VOTE!

Richard Burr
FOR U.S. SENATE



***Richard Burr* Is Making
Health Care Affordable and Accessible
for All North Carolina Families**

...and he is working to make it easier for small businesses to offer health insurance for their employees.

***Richard Burr* Works to Reduce
the Tax Burden on Families & Seniors**

...and he voted to repeal the Death Tax and Marriage Penalty Tax, increase the per Child Tax Credit, and cut income taxes for all North Carolina families.

***Richard Burr* Protects
North Carolina Jobs**

...and he opposes unfair trade agreements that hurt American workers.

***Richard Burr* Helps
Families Achieve the
Dream of Homeownership**

VOTE NOVEMBER 2ND



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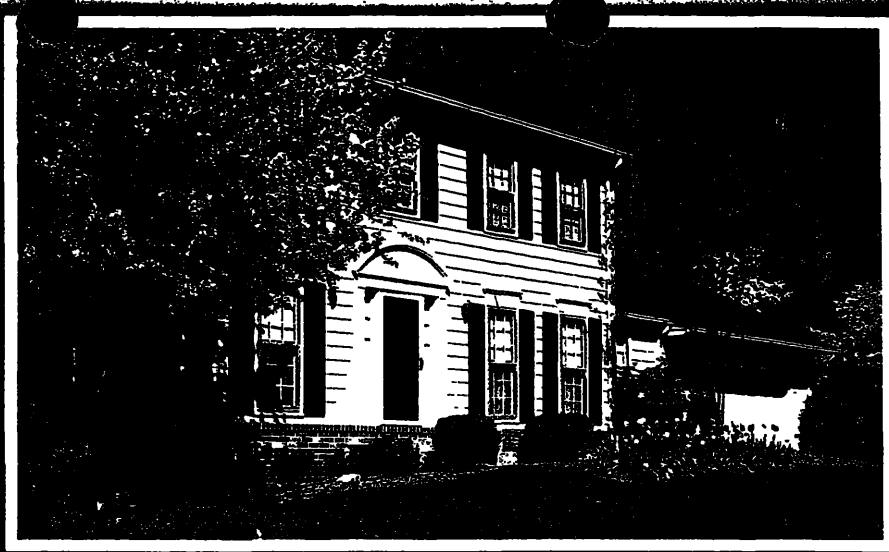
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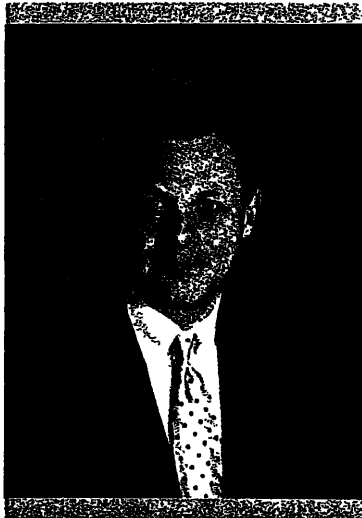
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The American Dream
Is Turning into a Reality

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And then you buy the
home of your dreams



Richard Burr Is Helping to Make the American Dream a Reality.

Richard Burr has worked to cut taxes for North Carolina families, putting more money in your pocket.

Richard Burr has voted to reduce your tax burden by repealing the Death Tax and Marriage Penalty Tax, increasing the per Child Tax Credit, and cutting income taxes for all North Carolina families.

For over a decade, **Richard Burr** has been a leader in the effort to improve the quality of life in North Carolina.

*Now a first home is within reach...
because Richard Burr is committed to the dream
of homeownership.*

North Carolina Association of REALTORS®.



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THE STRINI FAMILY

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Richard Burr is
Opening Up Homeownership
to More Families



Attachment 6
Page 1 of 2

Building a Stronger North Carolina... *One Neighborhood at a Time.*

Richard Burr is Making Health Care Affordable and Accessible for Everyone

In Congress, Richard Burr is working to make it easier for small businesses to offer health insurance for their employees. When small businesses are able to provide health insurance benefits, the quality of life improves for North Carolina's working families.

Richard Burr Works to Reduce the Tax Burden on Families & Seniors

Richard Burr has voted to repeal the Death Tax and the Marriage Penalty Tax, increase the Child Tax Credit, and cut income taxes for all North Carolina families. That's why Richard Burr was given "The Taxpayer's Hero Award" for his work to cut government waste and taxes.

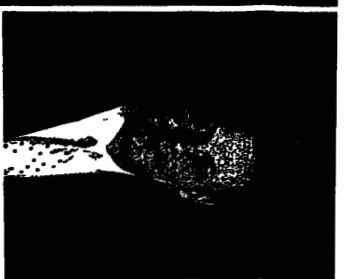
Richard Burr Protects North Carolina Jobs

Richard Burr works to protect North Carolina workers from illegal imports from China and he opposes unfair trade agreements that hurt American workers. He has worked to create a new research park that will create thousands of new jobs.

Richard Burr Helps Families

Achieve the American Dream

Richard Burr supports the American Dream Downpayment Act. This program helps 40,000 families achieve the dream of homeownership each year by providing downpayment assistance.



Richard Burr

Opening Up Homeownership to More Families

For over a decade, Richard Burr has been a leader in the effort to help North Carolina families live the American Dream:

- Making Health Care Affordable and Accessible for Everyone
- Reducing the Tax Burden on Families & Seniors
- Protecting North Carolina Jobs
- Helping Families Achieve the American Dream



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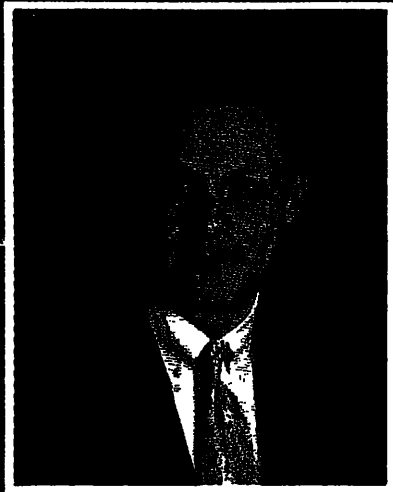
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A little nicer yard...



Richard Burr

*Has worked to cut taxes
for North Carolina families...*

...and the House of Representatives has passed the Tax Reform Act of 2017, which will cut taxes for millions of families across the country. This is a historic moment for the American people, and it's one that I'm proud to be a part of. The new law will reduce the corporate tax rate from 35% to 21%, which will encourage businesses to invest and create jobs. It will also cut the individual income tax rates for most taxpayers, and it will simplify the tax code by eliminating many deductions and credits that have become overly complex. This is a real win for the middle class, and it's a win that I'm proud to have helped achieve.

...and the House of Representatives has passed the Tax Reform Act of 2017, which will cut taxes for millions of families across the country. This is a historic moment for the American people, and it's one that I'm proud to be a part of. The new law will reduce the corporate tax rate from 35% to 21%, which will encourage businesses to invest and create jobs. It will also cut the individual income tax rates for most taxpayers, and it will simplify the tax code by eliminating many deductions and credits that have become overly complex. This is a real win for the middle class, and it's a win that I'm proud to have helped achieve.

*...And Now the Home of Your Dreams
Can Be Yours.*